

HOUSE No. 853

By Mr. Nangle of Lowell, petition of David M. Nangle relative to the powers of fiduciaries. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT RELATIVE TO THE POWERS OF FIDUCIARIES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 5A of Chapter 195 of the General Laws,
2 as appearing in the 2002 Official Edition is hereby amended by
3 inserting after paragraph (4) the following paragraph:

4 (5) In addition to the powers conferred in this section, a fidu-
5 ciary, in its discretion, shall have the following powers conferred
6 in this section, a fiduciary, in its discretion, shall have the
7 following powers:

8 (a) to inspect and monitor real and personal property to which
9 the fiduciary takes legal title (including, without limitation, inter-
10 ests in sole proprietorship, partnerships, or corporations and any
11 assets owned by such business enterprises) or over which a fidu-
12 ciary may exercise control, for the purpose of determining compli-
13 ance with environmental laws affecting such property, and to
14 respond to actual or threatened violation(s) of any environmental
15 laws affecting such property.

16 (b) to take, on behalf of an estate, trust, person or business, any
17 action necessary to prevent, abate, or otherwise remedy any actual
18 or threatened release of hazardous substances or violation of any
19 environmental laws affecting property held or controlled by the
20 fiduciary, either before or after the initiation of an enforcement
21 action by any government body;

22 (c) to refuse to accept property in trust if (i) the property either
23 is or may be contaminated by any hazardous substances, or such
24 property is being used or has been used for any activities directly
25 or indirectly involving hazardous substances, which could impair

26 the value of the assets therein held or controlled; or (ii) said prop-
27 erty may be in violation of any environmental laws;

28 (d) to settle or compromise, at any time, any and all claims
29 against the estate, trust, person or business which may be asserted
30 by any governmental body or private party, involving the alleged
31 release or threatened release of hazardous substances or the
32 alleged violation of any environmental laws affecting property
33 held by the estate or trust or owned by the person or business;

34 (e) to release or disclaim at any time or times any power
35 granted by any document or any statute or rule of law which, in
36 the sole discretion of the fiduciary, may expose the fiduciary to
37 liability under the environment laws or impair the value of the
38 assets retained or controlled by the fiduciary;

39 (f) for purposes of this section, “environmental laws” mean any
40 federal, state, or local law, rule, regulation or ordinances relating
41 to protection of the environment or human health. For purposes of
42 this section “hazardous substances” mean oil or any substance
43 defined as hazardous or toxic or otherwise regulated by any envi-
44 ronmental laws;

45 (g) the fiduciary shall be entitled to charge the reasonable cost
46 of any abatement, cleanup, inspection, assessment, insurance,
47 database review, or any other response or remedial action, as
48 authorized herein, against the income or principal for the estate,
49 trust, personal estate or business assets and shall not be personally
50 responsible therefor. The fiduciary shall not personally liable to
51 any beneficiary or any other party for any decrease in value or
52 exhaustion of assets by reason of the fiduciary’s reasonable com-
53 pliance with any environmental laws, specifically including any
54 reporting requirements under such laws.

55 (h) For purposes of this section, “fiduciary” means any indi-
56 vidual, partnership, corporation, bank, trust company, firm, or
57 other entity and any officer, employee or agent of such fiduciary
58 who is acting as an executor or administrator as defined in section
59 one of chapter one hundred ninety-seven, including a voluntary
60 executor or voluntary administrator, a guardian, or a conservator.
61 The provisions of this section shall apply to all fiduciary relation-
62 ships now in existence or hereafter created, and to the fiduciary
63 actions or inactions occurring either before or after the effective
64 date of this act.

1 SECTION 2. Chapter 203 of the General Laws, as so
2 appearing, is hereby amended by inserting after section 14B the
3 following section:

4 Section 14C. Unless expressly limited by the governing instru-
5 ment, a fiduciary shall have, in its discretion, the following
6 powers:

7 (a) to inspect and monitor real and personal property to which
8 the fiduciary takes legal title (including, without limitation, inter-
9 ests in sole proprietorships, partnerships, or corporations and any
10 assets owned by such business enterprises) or over which a fidu-
11 ciary may exercise control, for the purpose of determining compli-
12 ance with environmental laws affecting such property, and to
13 respond to actual or threatened violation(s) of any environmental
14 laws affecting such property, held or controlled by the fiduciary;

15 (b) to take, on behalf of an estate, trust, person or business, any
16 action necessary to prevent, abate, or otherwise remedy any actual
17 or threatened release of hazardous substances or violation of any
18 environmental laws affecting property held or controlled by the
19 fiduciary, either before or after the initiation of an enforcement
20 action by any government body;

21 (c) to refuse to accept property in trust if (i) the property either
22 is or may be contaminated by any hazardous substances, or such
23 property is being used or has been used for any activities directly
24 or indirectly involving hazardous substances, which could impair
25 the value of the assets therein held or controlled, or (ii) said prop-
26 erty may be in violation of any environmental laws;

27 (d) to settle or compromise, at any time, any and all claims
28 against the estate, trust, person or business which may be asserted
29 by any governmental body or private party, involving the alleged
30 release or threatened release of hazardous substances and for the
31 alleged violation of any environmental laws affecting property
32 held by the state or trust or owned by the person or business;

33 (e) to release or disclaim at any time or times any power
34 granted by any document or any statute or rule of law which, in
35 the sole discretion of the fiduciary, may expose the fiduciary to
36 liability under the environmental laws or impair the value of the
37 assets retained or controlled by the fiduciary;

38 (f) for purposes of this section, “environmental laws” mean any
39 federal, state, or local law, rule, regulation or ordinance relating to

40 protection of the environment or human health. For purposes of
41 this section, “hazardous substances” mean oil or any substance
42 defined as hazardous or toxic or otherwise regulated by any envi-
43 ronmental laws;

44 (g) the fiduciary shall be entitled to charge the reasonable cost
45 of any abatement, cleanup, inspection, assessment, insurance,
46 database review, or any other response or remedial action, as
47 authorized herein, against the income or principal for the state,
48 trust, personal estate or business assets and shall not be personally
49 responsible therefore. The fiduciary shall not be personally liable
50 to any beneficiary or any other party for any decrease in value or
51 exhaustion of assets by reason of the fiduciary’s reasonable com-
52 pliance with any environmental laws, specifically including any
53 reporting requirements under such laws.

54 (h) For purposes of this paragraph, a “fiduciary” means any
55 individual, partnership, corporation, bank, trust company, firm, or
56 other entity and any officer, employee or agent of such fiduciary,
57 who is acting in any of the following capacities: (A) trustee under
58 a will or inter vivos instrument creating a trust under which the
59 trustee takes title to, or otherwise controls or manages, property
60 for the purpose of protecting or conserving such property under
61 the ordinary rules applied in the course of the commonwealth; (B)
62 a court-appointed receiver; (C) a trustee appointed in proceedings
63 under federal bankruptcy laws; (D) an assignee or a trustee acting
64 under an assignment, made for the benefit of creditors pursuant to
65 sections forty through forty-two of chapter two hundred and three;
66 or (E) a trustee, pursuant to an indenture agreement or similar
67 financing agreement, for debt securities, certificates of interest of
68 participation in any such debt securities, or any successor thereto,
69 and (ii) who holds legal title to, controls or manages directly or
70 indirectly, any site or vessel as fiduciary for purposes of adminis-
71 tering or an estate or trust of which such site or vessel is a part.
72 The provisions of this section shall apply to all fiduciary relation-
73 ships now in existence or hereafter created, and to the fiduciary
74 actions or inactions occurring either before or after the effective
75 date of this act.